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Draft report

Annex II

Report of the Chair of the Working Group on the Definition and Delimitation of Outer Space

1. At its 878th meeting, on 24 March 2014, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space reconvened its Working Group on the Definition and Delimitation of Outer Space under the chairmanship of José Monserrat Filho (Brazil).

2. The Chair drew the attention of the Working Group to the fact that, pursuant to General Assembly resolution 68/75, the Working Group had been convened to consider only matters relating to the definition and delimitation of outer space.

3. The Working Group had before it the following:

(a) Note by the Secretariat entitled "National legislation and practice relating to the definition and delimitation of outer space" (A/AC.105/865/Add.14 and 15);

(b) Note by the Secretariat entitled "Questions on the definition and delimitation of outer space: replies from Member States" (A/AC.105/889/Add.13 and 14);

(c) Note by the Secretariat entitled "Questions on suborbital flights for scientific missions and/or for human transportation" (A/AC.105/1039/Add.2 and 3);

(d) Conference room paper entitled "Matters relating to the definition and delimitation of outer space: replies of the Russian Federation" (A/AC.105/C.2/2014/CRP.6);

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(e) Conference room paper entitled "Matters relating to the definition and delimitation of outer space: replies of Uruguay" (A/AC.105/C.2/2014/CRP.13);

(f) Conference room paper on the contribution of Turkey to the fifty-third session of the Legal Subcommittee (A/AC.105/C.2/2014/CRP.26);

(g) Conference room paper entitled "Summary of information on national practices and legislation of States with regard to the definition and delimitation of outer space" (A/AC.105/C.2/2014/CRP.27).

4. The Chair gave a presentation, summarizing general information, views and theories on matters relating to the definition and delimitation of outer space that had emerged since the Subcommittee began its consideration of those matters in the 1960s.

5. The view was expressed that current and foreseeable civil aviation operations would not exceed altitudes of 100-130 km, where there was a potential danger of collision with numerous spacecraft. In that connection, the delegation expressing that view proposed that the boundary between airspace and outer space be established in that range.

6. Some delegations expressed the view that a functional approach would be efficient for determining the scope of application of air law and space law.

7. The view was expressed that there was no need to seek a legal definition or delimitation of outer space and that States should continue to operate under the current framework, which presented no practical difficulties, until such time as there was a demonstrated need and a practical basis for developing a definition or delimitation of outer space.

8. Some delegations expressed the view that it was necessary for the Subcommittee to address the issue of the definition and delimitation of outer space jointly with the International Civil Aviation Organization.

9. The view was expressed that many provisions of the United Nations treaties on outer space addressed the situation where space activities were carried out in national or international air space and that, although the exercise by States of their sovereignty over their national air space could not hinder the freedom of exploration and use of outer space, the wording of the second paragraph of article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies could imply that access to outer space, despite being a necessary condition for exploring and using it, would not benefit from the same degree of freedom.

10. The view was expressed that in certain cases, an altitude-based criterion for delimitation could be considered, as it would provide for an objective element in order for an activity to qualify as a space activity. That could be the case, for instance, for sounding rockets that were not designed to place a payload in orbit but might nevertheless reach considerable altitude.

11. The view was expressed that it was necessary to acknowledge the coexistence of various forms of law that had resulted in multiple agreements and sources of law governing the same topic. With respect to air law and space law, the balancing of different rights and obligations contained within a single treaty or reconciling norms and procedures in multiple treaties governing the same topic and resolving conflicts

across regimes required a practical approach that addressed the relative normativity or hierarchy arising from the determination of whether legal rules existed to govern instruments that traversed, moved in or used airspace and outer space. The approach should also decide whether priority should be given to a specific rule or interpretation among several that might be applicable to a legal matter or possible dispute. In that connection, the delegation that expressed that view was also of the view that such work would assist the determination of international priorities in areas of air law and space law that had developed independently of each other.

12. Some delegations expressed the view that, given the absence of consensus on the definition and delimitation of outer space, the Working Group could summarize the views and concepts that had emerged during its multi-year work and present them as a report to the Subcommittee, with a view to the possible suspension of the Group's work until new developments in the exploration and use of outer space would justify the need for its definition and delimitation.

13. The view was expressed that the Working Group could consider the inclusion in future addenda to the summary of information on national practices and legislation of States relating to the definition and delimitation of outer space of regulation No. 388/2012 of 19 April 2012 of the European Parliament and the Council of the European Union, on setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, which contained a definition of "space-qualified" as referring to "products designed, manufactured and tested to meet the special electrical, mechanical or environmental requirements for use in the launch and deployment of satellites or high-altitude flight systems operating at altitudes of 100 km or higher".

14. The Working Group heard a proposal from the Chair to define the term "space activities" with the objective of building a consensus, even a preliminary one, while temporarily putting aside the task of defining and delimiting outer space in order to concentrate on the task of defining space activities, which were one of the subjects of regulation by space law. The Working Group agreed to continue its discussion of the proposal at the next session of the Subcommittee, in 2015.

15. On the basis of its discussions, the Working Group agreed:

(a) To continue to invite States members of the Committee on the Peaceful Uses of Outer Space to submit information on national legislation or any national practices that might exist or were being developed that related directly or indirectly to the definition and/or delimitation of outer space and airspace, taking into account the current and foreseeable level of development of space and aviation technologies;

(b) To continue to address to the Governments of Member States, through the Secretariat, the following questions:

(i) Does your Government consider it necessary to define outer space and/or to delimit airspace and outer space, given the current level of space and aviation activities and technological development in space and aviation technologies?

(ii) Does your Government consider another approach to solving this issue?

(iii) Does your Government give consideration to the possibility of defining a lower limit of outer space and/or an upper limit of airspace, recognizing at the

same time the possibility of enacting special international or national legislation relating to a mission carried out by an object in both airspace and outer space?

(c) To continue to invite States Members of the United Nations and permanent observers of the Committee to provide their replies to the following questions:

(i) Is there a relationship between suborbital flights for scientific missions and/or for human transportation and the definition and delimitation of outer space?

(ii) Will the legal definition of suborbital flights for scientific missions and/or for human transportation be practically useful for States and other actors with regard to space activities?

(iii) How could suborbital flights for scientific missions and/or for human transportation be defined?

(iv) Which legislation applies or could be applied to suborbital flights for scientific missions and/or for human transportation?

(v) How will the legal definition of suborbital flights for scientific missions and/or for human transportation impact the progressive development of space law?

(vi) Please propose other questions to be considered in the framework of the legal definition of suborbital flights for scientific missions and/or for human transportation.